

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH B. GIBBS,

Plaintiff,

v.

A. HERRERA, et al.,

Defendants.

No. 2:21-cv-2188 TLN AC P

ORDER

Plaintiff, a state prisoner, is proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has filed an in forma pauperis affidavit and a prisoner trust fund account statement. ECF Nos. 12, 13. The prisoner trust fund account statement indicates that as of March 1, 2022, plaintiff's account contained \$4,009.08. ECF No. 12 at 2.

In order to commence an action, plaintiff must file a complaint as required by Rule 3 of the Federal Rules of Civil Procedure, and plaintiff must either pay both the \$350.00 filing fee and the \$52.00 administrative fee for a civil action or file an application requesting leave to proceed in forma pauperis.¹ See 28 U.S.C. §§ 1914(a), 1915(a). The court may authorize the commencement of an action "without prepayment of fees and costs or security therefor, by a

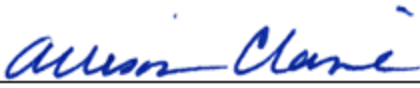
¹ If leave to file in forma pauperis is granted, plaintiff will still be required to pay the \$350.00 filing fee but will be allowed to pay it in installments. Litigants proceeding in forma pauperis are not required to pay the \$52.00 administrative fee.

1 person who submits an affidavit . . . that [he] is unable to pay such fee or give security therefor.”
2 28 U.S.C. § 1915(a). The balance off plaintiff’s prisoner trust fund account shows that he is able
3 to pay the filing fee and costs. Thus, plaintiff has made an inadequate showing of indigency.
4 See, e.g., Olivares v. Marshall, 59 F.3d 109, 112 (9th Cir. 1995); Alexander v. Carson Adult High
5 Sch., 9 F.3d 1448, 1449 (9th Cir. 1993). Plaintiff will therefore be granted twenty-one days in
6 which to submit the appropriate filing fee to the Clerk of Court.

7 Plaintiff is cautioned that failure to pay the fee will result in a recommendation that the
8 application to proceed in forma pauperis be denied and the instant action be dismissed without
9 prejudice.

10 Accordingly, IT IS HEREBY ORDERED that, within twenty-one days from the date of
11 this order, plaintiff shall submit the appropriate filing fee.

12 DATED: May 9, 2022

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14 ALLISON CLAIRE
15 UNITED STATES MAGISTRATE JUDGE
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